

MALMEDY and McCARTHY



By
FREDA UTLEY

WELL-INFORMED anti-Communists know how right McCarthy was when he denounced and exposed Owen Lattimore and the rest of the gang responsible for the Communist conquest of China. But even the Senator's best friends usually keep silent when he is accused of having "defended Nazi murderers" because, back in 1949, he dared to question the validity of confessions obtained under duress from the German prisoners of war accused of the Malmedy Massacre; and further insisted that even defeated enemies should not be denied a fair trial by due process.

Since few of McCarthy's supporters have been as courageous as he in defying the "liberal" smearbund, which has vilified anyone who demanded justice for Germans, they have let his enemies get away with murder, literally as well as figuratively. Figuratively because they have played upon both ignorance and moral cowardice to assassinate McCarthy's character. Literally be-



cause it was the "professional liberals" who inspired the war crimes trials which condemned German prisoners of war to death on evidence which no court in the United States would have considered valid.

Now that an ignorant old man from Vermont has smeared McCarthy on the Senate floor with the same false accusation as Drew Pearson, Elmer Davis and other Pharisees, it is more than ever necessary to publish the facts. But it is unlikely that either the *New York Times*, or other newspapers less guilty of suppressing all the news which does not fit, will ever perform this public service. Nor can I, in a short article, hope to do more than

refute some of the lies and correct some of the misinformation spewed forth by the totalitarian liberals and anti-anti-Communists.

This is not a question which concerns simply McCarthy's reputation. Whatever the reader's opinion may be concerning the Junior Senator from Wisconsin, he cannot afford to ignore the dire consequences of the trials of the vanquished by the victors of the second World War. Far from deterring any nation from committing atrocities in future wars, these trials annulled centuries of effort to establish civilized rules of warfare. For they established the terrible precedent that the victors are immune from punishment, while the vanquished can have no hope of a fair trial. The net result of our return to the Roman principle of "woe to the vanquished" is to encourage the commission of any and every atrocity which can help to win a war.

IT WAS bad enough that we shared the bench at Nuremberg with Soviet Russia, which had committed, and was still busily engaged in committing, at least as great and terrible crimes against humanity as Nazi Germany. It was worse that Article 6 of the Charter which established the "International Military Tribunal" precluded consideration of crimes not committed "in the interests of the Axis countries." Thus the U.S. and Britain became accessories after the fact by forbid-

ding mention of Communist crimes at Nuremberg.

Mr. Justice Jackson, the chief U.S. prosecutor, together with our representative on the bench, showed no hesitation in collaborating with the Soviets in refusing to hear the evidence presented by German defense council proving that the Russians, not the Germans, had murdered 10,000 Polish officers in Katyn Forest. The tribunal instead heard a witness produced by Moscow who said the Germans had committed this crime.

Today, most Americans probably would agree with Senator Taft and the few others who had the courage and foresight to condemn the Nuremberg trials at the time they were held. But the public has been kept in almost complete ignorance of the U.S. Army trials at Dachau of minor German "war criminals," where both the methods of investigation and the trials were far worse than at Nuremberg; and which established a precedent for the mistreatment of our prisoners of war in Korea.

Few, if any, of the American soldiers who were starved, beaten and tortured by their Communist captors to make them confess to "germ warfare" or other "war crimes" can have known that the American Army had employed similar methods to force confessions from teen-age enlisted men and junior officers accused of having murdered American prisoners of war at Malmedy.

And none of them are likely to have ever heard of Lieutenant Colonel Willis M. Everett, of Atlanta, Georgia, who wrote as follows in his 1946 petition to the Supreme Court on behalf of the German soldiers for whom he had acted as Chief Defense Counsel at Dachau:

It is not only because of the fate of the seventy-four accused, but primarily of the historical significance and fundamental importance of the Malmedy Trial this Petition for Review may be justified. Unfortunately, the history of international law reveals that many injustices have been committed and many bad precedents have been established. This trial will receive a share of criticism in the future because its decision will necessarily serve as a precedent for the military profession of all of the nations of the world.

THE U.S. Supreme Court rejected the petition, thus washing its hands of all responsibility. Nor was any heed taken of the appeal of the twenty-five German Catholic bishops who wrote in 1948:

"Will not the tortures at the preliminary inquests at Schwabische Hall and Oberwesel, and the mass executions at Landsberg, later on do more harm to victorious America than a lost battle?"

Today the mills of God grind so fast that these prophecies have already been fulfilled. But, unhappily, by our young men who, like many of the condemned Germans, were guilty only of having fought bravely

for their country in far-off Korea.

The columnists and commentators who, like Elmer Davis, accuse McCarthy of having "used propaganda from German Communists to save the lives of Nazi officers who had murdered American prisoners at Malmedy" are either deliberately misinforming the public or have never taken the trouble to learn the facts.

The majority of the young men sentenced by the U.S. Army Court at Dachau for the Malmedy Massacre were neither Nazis nor officers, but teen-age enlisted men and young non-commissioned officers. And when Senator McCarthy, to his everlasting credit, endeavored to stop the hangings at Landsberg of these German prisoners of war, he was relying upon information given by such irreproachable Americans as Lt. Colonel Willis P. Everett, and by prominent religious leaders.

Like the German Catholic bishops, the Lutheran Bishop Wurm of Stuttgart had protested to the American authorities against what he called "terrible investigation methods which mock description." These "methods" consisted of beatings and kickings; knocking out of teeth and the breaking of jaws; starvation and solitary confinement for months without exercise or visitors or correspondence; promises of release from pain and the threat of death if the victim would sign statements incriminating others; threats of reprisals on the prisoner's wife,

children and parents if he refused to sign dictated statements; mock trials in dark rooms around a table lighted only by candles around a crucifix; and bogus priests promising absolution if the prisoner would agree to sign false statements.

The sickening details can be read in a long book, printed in the English language, issued by the "Evangelical Church in Germany," and called *Memorandum on the Question of War Crimes Trials before American Military Courts*.

Far from denying the truth of these allegations, two of the "un-American" investigators employed by the U.S. Army to extract "confessions" from German prisoners of war, namely, Lt. Colonel Ellis and Lt. Perl, told Judge Von Roden of the Simpson Commission in 1949 that force was necessary in view of the difficulty in obtaining evidence. Perl said: "We had a tough nut to crack and we had to use persuasive methods." He further admitted that these methods included "some violence and mock trials," and that the prosecution's case in the Malmedy cases rested on the evidence thus obtained.

Colonel A. H. Rosenfeld, who was Chief of the Dachau branch of the U.S. War Crimes Administration until he resigned in 1948, when asked at a press interview before leaving Germany whether there was any truth in the German allegations concerning mock trials, replied,

"Yes, of course. We couldn't have made those birds talk otherwise. It was a trick and it worked like a charm."

One needs only to read the U.S. Military Government directive to the tribunals which tried the Germans to realize that these soldiers were judged according to un-American "principles" of justice closely akin to those applied by the Nazis and the Communists. Dated November 30, 1945, this U.S. Army Order says:

The purpose of proceedings in Military Government Courts and of the principal enactments enforced by them is the protection of the U.S. Forces in occupation and the advancement of the political, military and administrative objectives declared by the Control Council and the Theatre Commander. All enactments will therefore be interpreted broadly and in accordance with their obvious intention. Proceedings will be conducted with the view to the attainment of this purpose to the fullest possible extent; technical and legalistic viewpoints will not be allowed to interfere with such a result.

Ordered not to allow "technical and legalistic viewpoints" to interfere with the desired result of the trial, the judges disregarded normal rules of evidence. They admitted the testimony of co-defendants as conclusive evidence; based some of their verdicts on hearsay, double hearsay, and unsigned documents;

regarded "confessions" as conclusive proof of guilt even when they were retracted in court; and rejected the rebuttal evidence of the defense even when it was supplied by American Army witnesses.

THERE was no jury, nor were the accused allowed German defense counsel, although they had been arbitrarily reduced to civilian status before their trial in order to deprive them of the protection offered by the Geneva Convention to prisoners of war.

The court consisted of ten U.S. Army officers and one "law member," who was the same Colonel A. H. Rosenfeld who had directed the pre-trial inquisition of the defendants. Since the prosecutors were his investigators, it was hardly surprising that Colonel Rosenfeld blocked all attempts by the defense to prove that confessions had been made under duress. As Colonel Everett has stated:

"When details of the beatings and other pressures were requested, the prosecution would object, and the law member of the court would always sustain the objection and prevent the evil and ruthless tactics of the prosecution from being further exposed in open court."

It was typical of the proceedings that in the case of a boy of eighteen called Arvid Freimuth, who had hung himself in his cell after repeated beatings rather than sign the "confession" dictated to him, the prose-

cution was permitted to bring in as "evidence" the statement which he would have been forced to sign if he had not committed suicide.

We shall probably never know the truth concerning the "Malmedy Massacre" of surrendered Americans during the Battle of the Bulge. The Germans contend that they were accidentally killed because, after their surrender, they had been left disarmed, but unguarded, and were shot down by German tanks whose gunners were unaware that the uniformed Americans impeding their progress were prisoners of war.

The truth of the matter was probably most correctly stated by General Handy who, in commuting the death sentences of the surviving Malmedy prisoners on January 31, 1951, said: "The offenses are connected with a confused, mobile and desperate combat action." No American combat soldier is likely to disagree with this pronouncement, which is supported by the confused and contradictory account of the incident by American soldiers who survived the massacre. Moreover Lt. Colonel McCowan testified for the defense that he himself and some hundred other Americans taken prisoner by the task force accused of the crime had been properly treated.

The Senate Judiciary Committee which, in 1949, under the chairmanship of Baldwin of Connecticut, "investigated" the charges against the Army, like the Tydings Committee a year later, showed itself

more interested in a whitewash operation than in remedying evil. On July 26, 1949, Senator McCarthy, after withdrawing in disgust from the hearings, made a speech on the Senate floor in which he drew attention to the fact that Senator Baldwin's law partner was one of the men responsible for the tortures inflicted on the accused Germans; and that another member of the Judiciary Committee, Senator Kefauver, had as his law partner a certain Mr. Shumaker, who was similarly responsible for the unlawful and un-American procedures at Dachau. In 1953, two of the Army's investigators at Dachau were arrested in Vienna as Soviet spies.

WHEN I visited Landsberg last fall, there were still some 300 Germans incarcerated in its grim fortress, including the surviving Malmedy defendants. Our prisoners are today decently treated and a considerable number have been released on parole during the past year, but there are many who have little or no hope of release because they are serving life sentences.

And as if to give substance to the charge that improper means were used to extract confessions of guilt, the instructions given on August 31, 1953, to our "Mixed Interim Parole and Clemency Board" say that any "parolee" who issues "any public written or oral statement of a personal, historical, military or political content, without prior ap-

proval of the competent authority, will be sent back to prison and deprived "of all credits otherwise allowable at the completion of his sentence."

Some of the inmates of Landsberg were undoubtedly guilty of crimes against humanity and are lucky to have escaped death by hanging. But the plain fact is that the majority of the real war criminals are either dead, or are living comfortably in the East Zone as adherents of the Communist regime; or are in Russia helping the Soviet preparations for war against us; or have disappeared among the mass of the German population. Most prisoners are little people who got caught up by accident to bear the brunt of the world's horror of Nazi crimes.

For the sake of America's reputation for justice, no less than because we wish to enlist the German people as our allies against Communist tyranny, we should seek to right the injustice of the post-war period. If those whose hearts bleed for McCarthy's "victims" would display some interest in the real miscarriages of justice in Germany, there would be hope of annulment of the instructions signed last August by our "liberal" High Commissioner, Mr. James B. Conant, which reads as follows:

"Neither parole nor clemency involves consideration of the propriety or legality of the trial proceedings, guilt or sentence, which are final and conclusive."